

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

In Re: Complaint of Access Integrated  
Network, Inc. Against BellSouth  
Telecommunications, Inc.

Complaint of XO Tennessee, Inc.  
Against BellSouth Telecommunications,  
Inc.

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Docket No. 01-00868

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OFFICE OF THE  
EXECUTIVE SECRETARY

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**RESPONSE TO BELL SOUTH'S PETITION FOR CLARIFICATION OR  
RECONSIDERATION**

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XO Tennessee, Inc. ("XO"), Access Integrated Network ("AIN") and ITC Delta^Com ("Delta^Com") submit the following response to the "Petition of BellSouth Telecommunications, Inc. for Clarification or Reconsideration" filed on May 1, 2002.

The Petition should be denied because (1) it asks the Hearing Officer to rule on issues which are not before her and (2) the hypothetical legal issues described by BellSouth are not sufficiently described to be meaningfully addressed.

In sum, BellSouth's Petition asks the Hearing Officer to render an advisory opinion concerning the legality, not of the BellSouth Select program which is the subject of this docket, but of other, vaguely described BellSouth marketing plans. The Hearing Officer should render no such opinions. If BellSouth needs guidance from the Authority concerning the legality of a particular marketing plan, BellSouth, like any other regulated entity, may seek informal guidance from the Authority's staff or file a petition for a declaratory ruling by the agency "as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency."

T.C.A. § 4-5-223.

Even if the Hearing Officer were inclined to expand her opinion with dicta concerning the legality of other BellSouth marketing programs, the Petition does not describe those

programs in sufficient detail to permit meaningful discussion. BellSouth, for example, states that it "has offers presently outstanding" which "link" the purchase of regulated and unregulated services. These offers are apparently not tariffed and have presumably never been reviewed by the Authority. What are these offers? How do they work? The petition is oddly lacking in specific details. Nevertheless, the carrier expects the Hearing Officer to give blanket approval to these ill defined offers without benefit of any evidentiary record.

It would be possible, if not wise, to write a legal treatise which describes the history and purpose of the anti-discrimination and anti-rebate statutes, speculates about various, hypothetical marketing programs and explains, necessarily at some length, why some programs might be legal and others not. As demonstrated in the post-hearing brief filed by the Complainants, there is ample case law, and at least one book, devoted to this subject. But it is not the job of the Hearing Officer or the Complainants to act as regulatory counsel for BellSouth.

The Hearing Officer has ruled on one, specific marketing plan: the BellSouth Select program. Under that plan, BellSouth paid secret (non-tariffed) cash rebates to a select group of business customers in exchange for the purchase of regulated telephone services. BellSouth knew, or reasonably should have known, as the Hearing Officer found, that such a scheme is a blatant violation of state law and the Authority's tariffing and resale requirements. But that finding hardly requires, or even invites, speculative musings about the legality of other real or imaginary marketing plans which BellSouth chooses to offer. The Hearing Officer did not and should not address issues which are not before her, especially ones which are too vaguely described to be meaningfully addressed.

The Petition should be denied.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 2 day of May, 2002.

Guy Hicks, Esq.  
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Henry Walker